UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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LARRY G. PHILPOT,

Plaintiff,

v.

LEMONWADE LLC,

Defendant.
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Index No.: 16-cv-1201 (KMW)

**MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO WITHDRAW**

Pursuant to Southern District of New York Local Civil Rule 1.4, Garbarini FitzGerald P.C. ("GF Law") submits this memorandum of law and accompanying Declaration of Richard M. Garbarini in support of its motion for Order permitting it to withdraw as counsel of record for Larry G. Philpot ("Philpot") on the ground that there is an absolute break-down in communication.

I. FACTS

This matter was filed on February 17, 2016. Garbarini Decl. at 2. For weeks there has been a complete and absolute breakdown in communication between GF Law and Mr. Philpot. Dozens of e-mails, text messages, and phone calls have been ignored with one exception. Garbarini Decl. at 3. Philpot did respond to a text message in which he agreed and consented to the requested withdrawal. Garbarini Decl. at 4. Philpot further responded to an email on April 15, 2016, demanding counsel withdraw. Garbarini Decl. at 5. It has become impossible to continue to represent the Plaintiff's interest. Garbarini Decl. at 6.

II. ARGUMENT

An order permitting the withdrawal of counsel of record may be granted "upon a showing by affidavit or otherwise of satisfactory reasons for withdrawal . . .." S.D.N.Y. Local Rule 1.4. Here, such satisfactory reasons plainly exist and withdrawal should be permitted.

Philpot has consistently refused to communicate with counsel. impairing the ability to represent Plaintiff. Further, the only communications from Philpot were demands that counsel withdraw.

Where the client fails to "cooperate with counsel in the prosecution or defense of an action by, among other things, failing to communicate with counsel," it is well established that "an adequate basis" exists "upon which to permit an attorney to be released from the obligation of continuing to represent the attorney's client." *Callahan v. Consolidated Edison Co. of New York, Inc.*, No. 00 Civ. 6542(LAK)(KNF),2002 WL 1424593, *1 (S.D.N.Y. July 1,2002). In addition, Rule 1.16(c)(7) of the New York Rules of Professional Conduct expressly authorizes withdrawal when "the client fails to cooperate in the representation or otherwise renders the representation unreasonably difficult for .the lawyer to carry out employment effectively."

Here, Philpot has disappeared from the prosecution of this action. This basis alone is sufficient to permit withdrawal. See *Bio Hi-Tech Co., Ltd. v. Comax, Inc.,* No. 07-cv-2260(RRM)(CLP), 2008 WL 3849554, *2 (E.D.N.Y. Aug. 18,2008) (permitting withdrawal where among other things the client has "failed to communicate with [counsel] [and] ha[s] not maintained contact" with counsel). Philpot has consented and agrees that withdrawal is appropriate. In fact, Philpot has demanded counsel withdraw.

No discovery has been conducted to date, and there will be no prejudice by allowing Richard Garbarini and GF Law to withdraw at this stage of the litigation.

III. CONCLUSION

For all the foregoing reasons, Richard Garbarini and GF Law respectfully requests that the Court enter an order permitting Richard Garbarini and GF Law to withdraw from its representation.

Dated: April 15, 2016
New York, New York

**GARBARINI FITZGERALD P.C.**

By: /s/ Richard M. Garbarini

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